

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**MOTION RECORD
(Returnable January 23, 2025)**

January 16, 2025

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

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(as of December 12, 2023)

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B	Exhibit “B” – Sale Process Order dated December 12, 2023
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D	Exhibit “D” – Receiver’s Closing Certificate dated October 29, 2024
3	Draft AVO Amendment Order

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION
(AVO Amendment Order)**

GFD 1333W Limited Partnership (“**GFD LP**”) will make a motion before the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on January 23, 2025 at 10:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1).
- ☐ In writing as an opposed motion under subrule 37.12.1(4).
- ☐ In person.
- ☐ By telephone conference.
- ☒ By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

THE MOTION IS FOR:

1. An order (the “**AVO Amendment Order**”) substantially in the form of the draft order attached at Tab 3 of the GFD LP’s Motion Record, among other things:
 - (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof; and
 - (b) amending the Approval and Vesting Order granted by this Court on October 8, 2024 (the “**AVO**”) to extend the period for the Assignee to provide notice to the Receiver of the APSs’ (each as defined below) to be disclaimed such that notice must be provided by no later than August 31, 2025 (the “**Extension**”).
2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. On October 12, 2023, following an application brought by Genesis Mortgage Investment Corporation (“**GMIC**”) (in its capacity as the junior secured lender in a syndicate of secured lenders (the “**Syndicate**”) of the Respondents), the Court issued an Order, among other things, appointing KSV Restructuring Inc. as the receiver and manager (the “**Receiver**”), without security, of all of the property, assets and undertakings (the “**Property**”) of 1333 Weber Street Kitchener LP (“**1333 Weber LP**”) and its general partner, 1776411 Ontario Limited (together with 1333 Weber LP, the “**Partnership**”).

4. The principal asset of the Partnership was the real property located at 1333 Weber Street East, City of Kitchener and the phased four-tower residential condominium project located thereon (the “**Project**”). The Project is currently comprised of the following four phases:

- (a) Phase 1: a partially complete residential building (“**Tower A**”);
- (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected (“**Tower B**” and “**Tower C**”); and
- (c) Phase 4: raw land wherein it is contemplated that a residential building will be erected (“**Tower D**”).

5. Prior to the receivership, all 177 units of Tower A and 325 units of Towers B and C were sold pursuant to pre-construction agreements of purchase and sale (the “**APSs**”).

6. Pursuant to an order dated December 12, 2023 (the “**Sale Process Order**”), this Court approved a sale process (the “**Sale Process**”) for the Project, including the retention of CBRE Limited as listing agent.

7. The Sale Process did not result in any offers supported by the Syndicate by the bid deadline of January 30, 2024 – as such, GMIC advised the Receiver that it would submit a bid for the Project. Pursuant to an agreement of purchase and sale with the Receiver dated March 4, 2024 (the “**Sale Agreement**”), GMIC, along with Elm Acquisitions Corp. (“**Elm**”) and Dorr Capital Corporation (“**Dorr**”, and collectively with GMIC and Elm, the “**Purchasers**”) ultimately agreed to purchase the Project. On October 7, 2024, the Purchasers’ interest in the

Sale Agreement was assigned to GFD LP, a limited partnership in which the Purchasers are the limited partners.

8. On October 8, 2024, the Court granted the AVO, which, among other things:

- (a) approved the transaction contemplated by the Sale Agreement (the “**Transaction**”);
- (b) upon closing of the Transaction, vested in 1333W Lands Ltd. (the “**Assignee**”), the nominee of GFD LP’s general partner, the Respondents’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement);
- (c) authorized the Receiver to terminate and disclaim the APSs within Tower B in the Project on or following closing of the Transaction, and within Tower A in the Project following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs are not being assumed by the Assignee; and
- (d) approved a deposit return protocol pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.

9. The Purchasers were not prepared to close the Transaction without certain disclaimers and terminations of APSs, and did not believe the Project would be economically viable if the APSs in respect of Towers A and B remained in place. This remains the case today.

10. Pursuant to the sales plan for Tower A (the “**Tower A Sales Plan**”), which was communicated to the purchasers of units in the Project (the “**Unit Purchasers**”) and was

appended to the Receiver's Second Report, the Purchasers will offer each Tower A Unit Purchaser the option to keep its unit if it enters into a revised APS with a 24% purchase price increase. If the Tower A Unit Purchaser does not agree to retain its unit on those terms, the APS for that unit may be disclaimed without the need to return to Court (in accordance with the AVO). Alternatively, at GFD LP's election, the Receiver may determine the original APS firm and binding and the Assignee may proceed with the original APS.

11. If an APS is disclaimed, the unit will first be offered to Tower B and Tower C Unit Purchasers (respectively) before being marketed to the public. In accordance with a requirement of the Purchasers' lender, the Tower A Sales Plan provides that the APSs will be disclaimed in stages, with no more than 40 to be disclaimed at any time in accordance with the AVO.

12. The purpose of the 120 day period for the Assignee to identify APSs that would not be assumed was to allow the Assignee sufficient time to (i) engage in discussions and negotiations with the Unit Purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A Sales Plan.

Recent Developments, Requested Extension and its Purpose

13. The Transaction closed on October 29, 2024. Since then, representatives of GFD LP have engaged in productive discussions with the Tower A Unit Purchasers regarding the potential assumption of the APSs.

14. As of today's date, 152 out of the 177 Tower A Unit Purchasers have been contacted by (or have themselves proactively contacted) GFD LP's broker regarding the retention of their units. Thus far, 60 have provided firm responses regarding their intentions, while 92 are continuing to consider their options.

15. Further, all 189 Tower B Unit Purchasers have been contacted by GFD's broker regarding the potential to purchase Tower A units that are not retained by the Tower A Unit Purchasers. Of that group, 99 have confirmed whether they would be interested, while 89 have not yet communicated whether they would be interested.

16. GFD LP has worked throughout to continue to prepare units in the Project for sale to the general public and to Tower A Unit Purchasers who wish to keep their units. To that end, on November 12, 2024, GFD LP obtained a Vendor and Builder License from the Home Construction Regulatory Authority ("**HCRA**"), a necessary step required to sell units to the public and to execute revised APSs with Tower A Unit Purchasers who wish to keep their units.

17. However, warranty coverage is not yet in place from Tarion, as GFD LP's application with Tarion was delayed, in part because the Vendor and Builder License was required first to advance the application. Further, GFD LP is currently working with its counsel retained to assist with the sale of the condominium units to prepare new agreements of purchase and sale and disclosure documents, and to prepare and obtain other relevant condominium documents that will be required to keep Tower A Unit Purchasers and sell units to the public. Completion of these latter two steps were further delayed due to holiday closures in late December 2024 and early January 2025.

18. The Assignee is presently required to advise the Receiver which APSs in Tower A will be assumed and which need to be disclaimed by February 26, 2025. GFD LP is seeking the Extension, which would extend this deadline to August 31, 2025, to allow additional time to conclude discussions and negotiations and ensure that the Tower A Unit Purchasers have sufficient time to make an informed decision as to whether they wish to keep their units. As

contemplated by the Tower A Sales Plan, GFD LP intends to instruct the Receiver to disclaim the APSs for the Tower A units in stages of not more than 40 at a time.

19. Regardless, given that the Tarion warranty coverage is not currently in place and certain condominium documentation has not been finalized, sales of the units to the general public would not be able to commence in the immediate term.

20. GFD LP expects to have concluded all discussions and to be in a position to market any units to the public before the expiry of the Extension.

21. The requested Extension will provide the time necessary for continued discussions between representatives of GFD LP and the Tower A Unit Purchasers as each work toward mutually beneficial solutions. The Motion Record for this motion will be served on the service list for these receivership proceedings, and notice will concurrently be provided to all Unit Purchasers.

Other Grounds

22. The inherent and equitable jurisdiction of the Court.

23. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

24. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

25. The Affidavit of Michael Yeung sworn January 16, 2025 and the exhibits attached thereto.

26. Such further and other material as counsel may advise and this Honourable Court may permit.

January 16, 2025

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GENESIS MORTGAGE INVESTMENT and **1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**
CORP.

Applicant

Respondents

Court File No.: CV-23-00706813-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**Notice of Motion
(AVO Amendment Order)**

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Tab 2

**ONTARIO
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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn January 16, 2025)**

I, **MICHAEL YEUNG**, of the City of Richmond, in the Province of British Columbia,
MAKE OATH AND SAY:

1. I am the Executive Vice President, Lending of Gentai Capital Corporation (“**Gentai**”), and an officer of Genesis Mortgage Investment Corporation (“**GMIC**”), a non-banking mortgage lender that is managed by Gentai. I have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. As discussed further below, GMIC, along with Elm Acquisitions Corp. (“**Elm**”) and Dorr Capital Corporation (“**Dorr**”, and collectively with GMIC and Elm, the “**Purchasers**”) agreed to purchase certain of the Respondents’ property pursuant to an agreement of purchase and sale dated

March 4, 2024 (the “**Sale Agreement**”) with the Receiver (as defined below) as the seller. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD 1333W Limited Partnership (“**GFD LP**”), a limited partnership in which the Purchasers are the limited partners.

3. The Sale Agreement and the transaction contemplated thereunder (the “**Transaction**”) was approved by this Court on October 8, 2024 pursuant to an approval and vesting order (the “**AVO**”, which is discussed in greater detail below), and upon closing of the Transaction the Purchased Assets (as defined in the Sale Agreement) were vested in 1333W Lands Ltd. (the “**Assignee**”), the nominee of GFD LP’s general partner, GFD 1333W GP Inc.

4. The Purchased Assets include real property and a four-tower condominium project located thereon, which towers are at various stages of construction. At the time of the appointment of the Receiver, hundreds of units in the towers had been sold pursuant to pre-construction agreements of purchase and sale (the “**APSs**”). The AVO, which is discussed in greater detail below, authorized the Receiver to disclaim: (i) all of the APSs for units in Tower B (as defined below) on or following the closing of the Transaction, and (ii) any of the APSs for units in Tower A (as defined below) after the closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs should be disclaimed. The Transaction closed on October 29, 2024.

5. I swear this affidavit in support of a motion by GFD LP for an Order (the “**AVO Amendment Order**”), among other things, amending the AVO to extend the period for the Assignee to provide notice to the Receiver of the APSs’ to be disclaimed such that notice must be

provided by no later than August 31, 2025 (the “**Extension**”). I believe that the relief sought is reasonable and appropriate in the circumstances, and will not materially prejudice any stakeholder.

A. Background

6. On October 12, 2023, following an application brought by GMIC (in its capacity as the junior secured lender in a syndicate of secured lenders of the Respondents (the “**Syndicate**”)), the Court issued an Order, among other things, appointing KSV Restructuring Inc. as the receiver and manager (the “**Receiver**”), without security, of all of the property, assets and undertakings (the “**Property**”) of 1333 Weber Street Kitchener LP (“**1333 Weber LP**”) and its general partner, 1776411 Ontario Limited (together with 1333 Weber LP, the “**Partnership**”). The principal asset of the Partnership was the real property located at 1333 Weber Street East, City of Kitchener and the phased four-tower residential condominium project located thereon (the “**Project**”). Since its appointment, the Receiver has maintained a case website with all materials filed with the Court in these proceedings, which is accessible at the following link: <https://www.ksvadvisory.com/experience/case/1776411ontario>.

7. GMIC brought the receivership application so that the Receiver could provide the stability and supervision required to preserve the value of the Project, and to facilitate a value-maximizing transaction through the Receiver’s marketing and sale of the Project. Further details on the application and the need to appoint the Receiver can be found in the affidavit of Michael Yeung sworn October 2, 2023, which is attached hereto (without appendices) as **Exhibit “A”**.

8. The Project is currently comprised of the following four phases:

- (a) Phase 1: a partially complete residential building (“**Tower A**”);

- (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected (“**Tower B**” and “**Tower C**”); and
- (c) Phase 4: raw land wherein it is contemplated that a residential building will be erected (“**Tower D**”).

I understand that all 177 units of Tower A and 325 units of Towers B and C were sold pursuant to pre-construction APSs.

9. Pursuant to an order dated December 12, 2023 (the “**Sale Process Order**”), this Court approved a sale process (the “**Sale Process**”) for the Project, including the retention of CBRE Limited (“**CBRE**”) as listing agent. A copy of the Sale Process Order is attached hereto as **Exhibit “B”**.

10. The Sale Process, which was led by CBRE and overseen by the Receiver, did not result in any offers supported by the Syndicate by the bid deadline of January 30, 2024. As such, GMIC advised the Receiver that it would submit a bid for the Project. As noted above, GMIC, Elm, and Dorr, as Purchasers, ultimately entered in the Sale Agreement with the Receiver, and their interest in the Sale Agreement is now held through GFD LP. The AVO, among other things:

- (a) approved the Transaction for the Purchased Assets contemplated by the Sale Agreement between the Receiver and the Purchasers;
- (b) upon closing of the Transaction, vested in the Assignee the Respondents’ right, title and interest in and to the Purchased Assets;

- (c) authorized the Receiver to terminate and disclaim certain of the APSs within Tower B in the Project on or following closing of the Transaction, and within Tower A in the Project following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs are not being assumed by the Assignee; and
- (d) approved a deposit return protocol pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.

11. The Court also granted an Order on the same date, among other things, approving the process for distributions to be made from the proceeds of the Transaction.

12. As described in the Receiver's supplement to its Second Report dated October 4, 2024 filed in connection with the AVO, the Purchasers were not prepared to close the Transaction without certain disclaimers and terminations of APSs, and did not believe the Project would be economically viable if the APSs in respect of Towers A and B remained in place. This remains the case today.

13. Pursuant to the sales plan for Tower A (the "**Tower A Sales Plan**"), which I understand was communicated to the purchasers of units in the Project (the "**Unit Purchasers**") and was appended to the Receiver's Second Report, GFD LP will offer each Tower A Unit Purchaser the option to keep its unit if it enters into a revised APS with a 24% purchase price increase. If the Tower A Unit Purchaser does not agree to retain its unit on those terms, the APS for that unit may be disclaimed without the need to return to Court (in accordance with the AVO). Alternatively, at GFD LP's election, the Receiver may determine the original APS firm and binding and the

Assignee may proceed with the original APS. If an APS is disclaimed, the unit will first be offered to Tower B and Tower C Unit Purchasers (respectively) before being marketed to the public. In accordance with a requirement of the Purchasers' lender, the Tower A Sales Plan provides that the APSs will be disclaimed in stages, with no more than 40 to be disclaimed at any time in accordance with the AVO.

14. The purpose of the 120 day period for the Assignee to identify APSs that would not be assumed was to allow the Assignee sufficient time to (i) engage in discussions and negotiations with the Unit Purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A Sales Plan.

15. The Transaction closed on October 29, 2024. Copies of the AVO and the Receiver's closing certificate are attached hereto as **Exhibits "C" and "D"**, respectively.

B. Recent Developments, Requested Extension and its Purpose

16. Since the granting of the AVO, representatives of GFD LP have engaged in productive discussions with the Tower A Unit Purchasers regarding the potential assumption of the APSs. GFD LP has retained: (i) Captain Real Estate Group Ltd. ("**Captain RE**") as its broker to lead these discussions with the Unit Purchasers, and (ii) Channel 13 Advertising and Design Inc. to assist with marketing throughout the process. As of the date hereof, I understand that 152 out of the 177 Tower A Unit Purchasers have been contacted by (or have themselves proactively contacted) Captain RE regarding the retention of their units. Thus far, 60 have provided firm responses regarding their intentions, while 92 are continuing to consider their options.

17. Further, all 189 Tower B Unit Purchasers have been contacted by Captain RE regarding the potential to purchase Tower A units that are not retained by the Tower A Unit Purchasers. Of that group, 99 have confirmed whether they would be interested, while 89 have not yet communicated whether they would be interested.

18. Throughout these discussions, GFD LP has worked to continue to prepare units in the Project for sale to the general public and to Tower A Unit Purchasers who wish to keep their units. On November 12, 2024, GFD LP obtained a Vendor and Builder License from the Home Construction Regulatory Authority (“**HCRA**”), a necessary step required to sell units to the public and to execute revised APSs with Tower A Unit Purchasers who wish to keep their units. However, warranty coverage is not yet in place from Tarion, as GFD LP’s application with Tarion was delayed, in part because the Vendor and Builder License was required first to advance the application. Further, GFD LP is currently working with its counsel retained to assist with the sale of the condominium units to prepare new agreements of purchase and sale and disclosure documents, and to prepare and obtain other relevant condominium documents that will be required to keep Tower A Unit Purchasers and sell units to the public. Completion of these latter two steps were further delayed due to holiday closures in late December 2024 and early January 2025.

19. Given the Transaction closed on October 29, the Assignee is presently required to advise the Receiver which APSs in Tower A will be assumed and which need to be disclaimed by February 26, 2025. GFD LP is seeking the Extension, which would extend this deadline to August 31, 2025, to allow additional time to conclude discussions and negotiations and ensure that the Tower A Unit Purchasers have sufficient time to make an informed decision as to whether they wish to keep their units. As contemplated by the Tower A Sales Plan, GFD LP intends to instruct the Receiver to disclaim the APSs for the Tower A units in stages of not more than 40 at a time.

GFD LP fully expects to have concluded this process in advance of the revised deadline to be imposed by the requested Extension.

20. In the meantime, stabilization of the Project has continued ahead of schedule, and construction will not be impacted by the Extension. Regardless, given that the Tarion warranty coverage is not currently in place and certain condominium documentation has not been finalized, sales of the units to the general public would not be able to commence in the immediate term. GFD LP expects that all necessary documentation will be in place to sell the units prior to the expiry of the Extension.

21. The proposed Extension has been discussed with the Receiver and its counsel. I understand that the motion record for the Extension will be served on the service list for these receivership proceedings, and that notice will concurrently be provided to all Unit Purchasers.

C. Conclusion

22. The requested Extension will provide the time necessary for continued discussions between representatives of GFD LP and the Tower A Unit Purchasers as each work toward mutually beneficial, reasonable and tailored solutions. I therefore believe the relief sought is for the benefit of all parties, and is reasonable and appropriate in the circumstances. I swear this affidavit solely

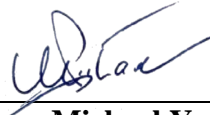
in support of GFD LP's motion for the AVO Amendment Order and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 16th day of January,)
2025 in accordance with Ontario *Regulation*)
431/20. The affiant was located in the City of)
Richmond, in the Province of British)
Columbia and the Commissioner was located)
in the City of Toronto, in the Province of)
Ontario.)



Thomas Gray

A Commissioner for Oaths in and for the)
Province of Ontario)



Michael Yeung

THIS IS EXHIBIT “A” REFERRED TO IN THE
AFFIDAVIT OF
MICHAEL YEUNG
SWORN
THE 16TH DAY OF JANUARY, 2025



A Commissioner for taking affidavits, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn October 2, 2023)**

I, **MICHAEL YEUNG**, of the City of Vancouver, in the Province of British Columbia,
MAKE OATH AND SAY:

1. I am Executive Vice President, Lending, for Gentai Capital Corporation ("**Gentai**"), and an officer of Genesis Mortgage Investment Corporation ("**GMIC**" or the "**Applicant**"). GMIC is a non-banking mortgage lender that is managed by Gentai. I have primary responsibility for matters pertaining to the borrowings of 1776411 Ontario Ltd. ("**177**") as general partner on behalf of 1333 Weber Street Kitchener LP (the "**Partnership**", and together with 177, the "**Debtor**") from GMIC and, as such, have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. I swear this affidavit in support of an application by GMIC for an order (the "**Receivership Order**"), among other things:

- (a) appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" to the proposed Receivership Order (the "**Real Property**"); (ii) all of the Debtor's right, title and interest in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom; and (iii) all of the Debtor's rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i) and (ii), the "**Property**"), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-33, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
- (b) granting a first-priority charge (the "**Receiver's Charge**") over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these proceedings (the "**Receivership Proceedings**"); and
- (c) granting a charge (the "**Receiver's Borrowings Charge**") over the Property subordinate only to the Receiver's Charge for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

3. The Debtor is the developer of a phased four-tower residential condominium development known as "Elevate Condominiums" (the "**Project**"), which is under construction on the Real Property. The Real Property is owned by 177, and consists of the lands located at 1333 Weber Street East, Kitchener, Ontario. The first phase of the four phase Project is a 15-storey, 177-unit residential development condominium tower ("**Phase 1**").

4. As discussed in more detail below, GMIC is the junior secured lender in a syndicate of secured lenders (the "**Syndicate**") consisting of itself and two senior secured lenders (the "**Senior Lenders**"). CMLS Financial Ltd. ("**CMLS**"), as the administrator and servicer of the Syndicate, advanced funds to 177, on behalf of the Partnership, to be used to finance the Project. The funding was made available pursuant to a Senior Commitment Letter and a Junior Commitment Letter that respectively provided for, among other things, a Senior Secured Loan Facility and a Junior Secured Loan Facility (each as defined below). As of September 13, 2023, there was approximately \$42,055,404.91 outstanding in respect of the Senior Secured Loan Facility, and \$19,598,083.91 outstanding in respect of the Junior Secured Loan Facility.¹ In addition, \$2,698,148.20 is outstanding in respect of a letter of credit facility provided by the Senior Lenders.

5. The Loan Facilities (as defined below) are collectively secured by, among other things, a first-ranking charge over the Real Property in the amount of \$82,000,000, a general security agreement over the personal property of 177 and the Partnership used in connection with or located on the Real Property, and the assignment of various related documents and rights. The Security (as defined below) is registered in favour of GMIC, as well as title custodians on behalf of the Senior Lenders, Computershare Trust Company of Canada ("**Computershare**") and CMLS

¹ Unless otherwise stated herein, all monetary amounts referenced are in Canadian dollars.

(together with GMIC, the "**Secured Parties**"). The Syndicate and CMLS are parties to an Interlender Agreement (as defined below) that, among other things, provides that the Senior Lenders have priority to GMIC, and assigns the Senior Secured Loan Facility to the Senior Lenders, and the Junior Secured Loan Facility to GMIC.

6. Regrettably, the Project has not proceeded as planned. The Debtor previously defaulted, and a demand and Notice of Intention to Enforce Security in accordance with the BIA were issued by counsel to the Secured Parties in March, 2023. CMLS ultimately agreed to forbear from enforcement pursuant to a Forbearance Agreement dated April 27, 2023 (the "**Forbearance Agreement**"). However, further defaults have since occurred, thus terminating the Forbearance Agreement. Construction on the Project has halted, and GMIC is unaware whether the site is currently secured. Further, I understand that insurance in respect of the Project has not been paid since February 2023.

7. In order to protect its investment and to preserve the value of the Project, GMIC has determined that it is necessary to apply to this Court for the appointment of a Receiver. The appointment of the Receiver is necessary to secure and stabilize the Property for the benefit of the Debtor's stakeholders. GMIC has the contractual right to appoint a receiver pursuant to the Security Documents. It has terminated its servicing agreement with CMLS and is a proper party to bring this Application. The Senior Lenders do not oppose the relief sought. In furtherance of its contractual rights, GMIC has commenced these Receivership Proceedings in order to preserve the Property and ultimately facilitate a sale of the Property to maximize recoveries for the Debtor's stakeholders.

I. OVERVIEW

A. Parties and the Project

8. GMIC is incorporated pursuant to the British Columbia *Business Corporations Act*, SBC 2002, c. 57, and is headquartered in Vancouver, British Columbia. It is also extra-provincially registered in Alberta and Ontario. GMIC is managed by Gentai, a privately held company that originates, funds, syndicates and services mortgage investments in Canadian residential and commercial properties.

9. The Partnership is a limited partnership registered under the Ontario *Limited Partnerships Act*, RSO 1990, c. L.16, and its principal place of business is Kitchener, Ontario. The Partnership's profile report is attached hereto as **Exhibit "A"**. The Partnership's general partner is 177, a privately held corporation registered under the Ontario *Business Corporations Act*, RSO 1990, c. B.16. 177 is also headquartered in Kitchener Ontario. 177's corporate profile report is attached hereto as **Exhibit "B"**.

10. 177 is the registered owner of, among other things, the Real Property. The Real Property includes the lands located at the municipal address 1333 Weber Street East, Kitchener, Ontario.

11. I understand that until in or around mid-July, the Project was under construction. I also understand that no phase of the four phase Project has been completed, although substantial progress has been made on Phase 1. As of the date hereof, I understand that all 177 dwelling units of Phase 1 and 325 dwelling units of phase 2 and phase 3 of the Project have been sold pursuant to agreements of purchase and sale.

B. Indebtedness Owing to the Syndicate and Related Security

12. The Syndicate, through CMLS, made funds available to 177, on behalf of the Partnership, pursuant to two mortgage loan facilities (together, the "**Loan Facilities**") under separate commitment letters (together, as amended, the "**Commitment Letters**"), both dated July 22, 2021, Pursuant to the interlender agreement dated August 19, 2021 between CMLS, the Senior Lenders, and GMIC (as amended from time to time, the "**Interlender Agreement**");

- (a) the Senior Lenders were assigned "Mortgage Loan No. 50715", the mortgage loan facility which was made available under the first commitment letter (as amended, the "**Senior Commitment Letter**", and the mortgage loan available thereunder, the "**Senior Secured Loan Facility**"); and
- (b) GMIC was assigned "Mortgage Loan No. 50716", the mortgage loan facility which was made available under the second commitment letter (as amended, the "**Junior Commitment Letter**" and the mortgage loan available thereunder, the "**Junior Secured Loan Facility**").

13. The Interlender Agreement provides that the Senior Lenders are entitled to first preference and absolute priority over GMIC in respect of their proportionate share of the amounts owing pursuant to the Senior Secured Loan Facility. A copy of the Interlender Agreement, as most recently amended, is attached hereto as **Exhibit "C"**.

14. The Senior Commitment Letter originally provided for, among other things, the Senior Secured Loan Facility in the principal amount of \$52,800,000. The original terms of the Senior Commitment Letter provided that the Senior Secured Loan Facility would: (i) bear interest at the

Royal Bank of Canada Prime Rate plus 220 basis points per annum, calculated monthly, not in advance and reset daily, with a floor rate of 4.65%; and (ii) mature 30 months after the first day of the month following the date of first advance under the Senior Secured Loan Facility. The Senior Commitment Letter also provided that one of the Senior Lenders would provide a non-revolving facility for the issuance of one or more letters of credit to be provided to the municipality or the region to secure duplicate costs with a facility limit of \$2,700,000.

15. The Junior Commitment Letter originally provided for, among other things, the Junior Secured Loan Facility in the principal amount of \$13,000,000. The Junior Commitment Letter provided that the Junior Secured Loan Facility would be subordinated to the Senior Secured Loan Facility via an interlender agreement. The original terms of the Junior Commitment Letter provided that the Junior Secured Loan Facility would: (i) bear interest at Royal Bank of Canada Prime Rate plus 875 basis points per annum, calculated monthly, not in advance and reset daily, with a floor rate of 11.2%; and (ii) mature 30 months after the first day of the month following the date of first advance under the Senior Secured Loan Facility. A condition precedent to the first advance of the Junior Secured Loan Facility under the Junior Commitment Letter was that GMIC would also provide a \$2,000,000 cost overrun facility (the "**Cost Overrun Facility**"). The Cost Overrun Facility was executed on July 15, 2021. A copy of the Cost Overrun Facility is attached hereto as **Exhibit "D"**.

16. Advances under the Loan Facilities were provided to the Debtor on a cost-in-place and cost-to-complete basis, supported by draw requests and progress claim reports approved by Altus Group Limited ("**Altus**").

17. The Senior Commitment Letter and the Junior Commitment Letter are attached hereto as **Exhibits "E" and "F"**, respectively.

18. The Commitment Letters originally provided that the facilities would be guaranteed by Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd., Jaykam Developers, and Pamata Hospitality Inc. Both Commitment Letters were amended on July 21, 2021 to remove Pamata Hospitality Inc. as a guarantor. The other guarantors originally named in the Commitment Letters (each of those parties, a "**Guarantor**") executed an unsecured guarantee and postponement of claims in favour of the Secured Parties on August 13, 2021 the "**Guarantee**"), which Guarantee continues to be in force. A copy of the Guarantee is attached hereto at **Exhibit "G"**.

19. The Junior Commitment Letter has otherwise been amended twice since the July 21, 2021 amendment. Pursuant to amendments on May 3, 2022, and April 27, 2023, among other things, the principal amount of the Junior Secured Loan Facility was increased to \$16,000,000 and \$19,000,000, respectively. Pursuant to the amendment on May 3, 2022, the Cost Overrun Facility was rolled into the Junior Secured Loan Facility: \$2,000,000 was to remain undisbursed and used to fund cost overruns, and the charge in favour of GMIC in respect of the Cost Overrun Facility was deleted from title. The most recent amendment to the Junior Commitment Letter was to provide bailout funding to the Debtor in connection with the Forbearance Agreement, and is discussed further below.

20. As of September 13, 2023, the total indebtedness owing under the Senior Commitment Letter was \$42,055,404.91 and the total indebtedness owing under the Junior Commitment Letter was \$19,598,083.91. Interest and costs continue to accrue.

21. As general and continuing security for the payment and performance of the Debtor's obligations under the Commitment Letters, the Secured Parties were granted various security by 177 and the Partnership (collectively, the "**Security**").

22. Among other things, the Security granted to the Secured Parties includes:

- (a) an \$82,000,000 charge/mortgage granted by 177 in respect of the Real Property (the "**Mortgage**"), governed by, among other things, the additional provisions registered therewith (the "**Mortgage Terms**"). The Mortgage and the Mortgage Terms are attached hereto as **Exhibit "H"**;
- (b) a Postponement of Interest receipted on August 17, 2021, in respect of a previously registered charge/mortgage over the Real Property by Westmount Guarantee Services Inc. ("**Westmount**"), the effect of which is to give the Mortgage first priority over the Real Property. As discussed further below, the Secured Parties have also entered into the Westmount Priority Agreement (as defined below). The Westmount Priority Agreement is attached hereto as **Exhibit "I"**;
- (c) a General Security Agreement dated August 13, 2021 (the "**GSA**") attached hereto as **Exhibit "J"**, pursuant to which, among other things, the Secured Parties were granted a security interest in all right, title and interest that the Debtor has or may have in the personal property which arises from, pertains to, is located on, or is used in the operation and maintenance of, the Real Property and any proceeds therefrom. The GSA provides that the security interest in favour of the Secured Parties is subject to Westmount's security interest in deposit monies of purchasers of units in the Project, discussed further below; and

(d) a General Assignment of Rents and Leases dated August 17, 2021 (the "**Assignment of Rents**"), pursuant to which, among other things, 177 assigned to the Secured Parties its interest in and to the Leases and Rents (each as defined in the Assignment of Rents) in respect of the Real Property. The Assignment of Rents is attached hereto as **Exhibit "K"**.

23. Both the Mortgage Terms and the GSA expressly provide that the Secured Parties may appoint a receiver over the relevant assets if an Event of Default (as defined therein) occurs.

24. Pursuant to several additional agreements, the Debtor also assigned various documents for the benefit of the Secured Parties, including all: material agreements and permits; agreements of purchase and sale; rights to the interest reserve created pursuant to the Commitment Letters; condominium voting rights; construction contracts; and the Debtor's interest in insurance (collectively, the "**Additional Security**"). The Additional Security is attached hereto as **Exhibit "L"**.

25. The Secured Parties registered the Mortgage in the Land Registry Office for the Land Titles Division of Waterloo (No. 58). Copies of the sub-searches of title conducted on September 23rd, 2023 (the "**Parcel Register**") in respect of the Real Property evincing the registration of the Mortgage and the Assignment of Rents on title is attached hereto as **Exhibit "M"**.

26. The Secured Parties also registered their security interest granted by the Debtor pursuant to the GSA under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "**PPSA**"). The Secured Parties' registration in this regard is reflected in the search results conducted against the Debtor under the PPSA effective September 20th, 2023 (the "**PPSA Searches**"), which are attached hereto as **Exhibit "N"**.

C. The Debtor's Other Creditors

Westmount

27. GMIC understands that the Debtor has entered into two deposit trust agreements with Westmount in connection with deposit monies received from time to time from purchasers of dwelling units in the first two phases of the Project. In connection therewith, Westmount registered a mortgage securing the principal amount of \$20,000,000 against the Real Property on November 24, 2020 (which amount was amended to \$50,000,000 on May 8, 2023), and the Debtor granted Westmount security interests in certain personal property, which was registered under the PPSA (collectively, the "**Westmount Security**"). The Westmount Security secures a cash collateral requirement from the Debtor in the amount of \$750,000 (the "**Required Cash Collateral**"), and the other obligations of the Debtor in connection with the deposit trust agreements.

28. Pursuant to the Westmount Priority Agreement (as most recently amended on May 8, 2023) the Secured Parties and Westmount agreed that:

- (a) the Security shall be an encumbrance and first charge upon the Property to the extent of the Senior Secured Loan Facility;
- (b) the Westmount Security, to the extent of the Required Cash Collateral, shall be an encumbrance and second charge upon the Property prior to the Junior Secured Loan Facility secured by the Security; and
- (c) the Security in respect of the Junior Secured Loan Facility shall otherwise have priority over the Westmount Security.

29. The Required Cash Collateral was subsequently assigned by Westmount to the Secured Parties.

30. The Westmount Priority Agreement otherwise provides that the Security shall at all times be postponed to and rank subordinate to Westmount in respect of the monies deposited by purchasers, in respect of which the Westmount Security shall have a first charge and priority over the Security for only so long as such monies shall remain in trust pursuant to the provisions of the trust agreements and in respect of which the Security shall constitute a second charge and security interest in those monies.

COR

31. GMIC also understands that, pursuant to a commitment letter dated May 8, 2023 from CORFinancial Corp. ("**COR**"), COR agreed to make available a loan to 177 in the maximum principal amount of \$3,500,000 (the "**COR Facility**"). To secure these amounts, COR has registered a charge against the Real Property and has registered security interests under the PPSA (the "**COR Security**"). Pursuant to an agreement with the Secured Parties dated May 8, 2023, COR agreed to, among other things (i) subordinate and postpone the indebtedness owing to it and the COR Security to the indebtedness owing pursuant to the Loan Facilities and the Security, and (ii) not challenge or contest any enforcement action by the Secured Parties (the "**COR Subordination and Standstill Agreement**"). The COR Subordination and Standstill Agreement is attached hereto at **Exhibit "O"**.

32. On September 28, 2023, the Applicant became aware of a Statement of Claim issued by COR against CMLS, Computershare and GMIC. A copy of the Statement of Claim is attached hereto at **Exhibit "P"**. GMIC denies many of the assertions in the Statement of Claim and denies

any liability whatsoever thereunder. I believe that the Debtor and certain of its records would be required in connection with the assertions and allegations made in the Statement of Claim.

33. As discussed further below and as evidenced in the Parcel Register, due to the recent defaults of the Debtor, construction liens have been registered against the Real Property by various trade contractors. As evidenced in the PPSA Searches, a leasing company has also registered a security interest against 177 in respect of a vehicle.

34. The Applicant intends to provide notice of the Receivership Proceedings, including the proposed Receiver's Charge and the Receiver's Borrowings Charge, to Westmount, COR, and all other secured parties of which it is aware.

35. GMIC is not aware of whether the Debtor has other creditors, including ordinary unsecured creditors.

II. THE DEBTOR'S DEFAULTS

36. The Debtor has committed several defaults under the Commitment Letters leading up to this Receivership Application.

37. Prior to April 2023, the following breaches under the Commitment Letters occurred, each of which constituted a default entitling CMLS, on behalf of the Secured Parties to demand repayment in full for the Loan Facilities:

- (a) May 2022: without the knowledge and consent of CMLS, the Debtor began incurring hard costs of construction on later phases of the Project without having secured the requisite financing.

- (b) December 2022: on and after December 8, 2022, several construction liens were registered against the Real Property.
- (c) March 2023: the Debtor failed to make a required interest payment to CMLS and failed to make a municipal tax payment on March 1, 2023.

38. On March 17, 2023, Blaney McMurtry LLP, on behalf of the Secured Parties, issued a demand letter and a NITES to 177 and the Partnership in connection with the defaults. Pursuant to the demand letter and the NITES, the deadline for the Debtor to repay the amounts owing was March 27, 2023. Copies of the demand letters and NITES are attached hereto at **Exhibit "Q"**.

39. At the instruction of the Senior Lenders and GMIC, CMLS ultimately entered into the Forbearance Agreement. The Debtor and the Guarantors acknowledged, pursuant to the Forbearance Agreement, that the Debtor was in default of its obligations and that CMLS was entitled to immediately enforce all of its rights and remedies under the Loan Facilities, the Commitment Letters, and the Security Documents (as defined therein). In exchange for certain amendments to the Commitment Letter (which, among other things, increased the principal amounts advanced under each of the Loan Facilities), CMLS agreed not to enforce its rights and remedies under the Loan Facilities, the Commitment Letters, and the Security until the earlier of March 1, 2024 or the occurrence of a further default under the Loan Facilities, the Commitment Letters, or the Security Documents. The Forbearance Agreement is attached hereto at **Exhibit "R"**.

40. In connection with the Forbearance Agreement, the principal amount of the Senior Secured Loan Facility was increased by \$2,000,000, and the principal amount of the Junior Secured Loan Facility was increased by \$3,000,000. The purpose of these increases was to provide bailout

funding to assist the Debtor in paying unpaid payables that were incurred, without permission, by the Debtor on later phases of the project, and to pay amounts owing to the construction lien claimants. To address these costs, additional financing was also provided by Westmount, and COR extended the COR Facility.

41. Since the Forbearance Agreement was executed, several additional defaults have occurred. Altus provided a report to CMLS indicating that there were additional cost overruns that were not disclosed at the time of the Forbearance Agreement. The Debtor has been unable to cover these costs, which caused construction on the Project to cease and has triggered defaults, including:

- (a) the registration of 18 construction liens (starting in July 2023); and
- (b) construction of the Project ceasing since in or around mid-July, 2023.

42. These defaults each constitute a "Forbearance Default", as defined in the Forbearance Agreement, the consequence of which is that the Forbearance Agreement and the forbearance provided for therein have terminated.

43. Since the occurrence of the Forbearance Defaults, the Applicant has terminated its servicing agreement with CMLS. It is therefore bringing this Application solely on its own behalf as a Secured Party.

III. PROPOSED RECEIVERSHIP

44. The Debtor is in default of its obligations under the Commitment Letters and is unable to repay the indebtedness owing to the Applicant. GMIC has lost all confidence in the Debtor's management to continue to satisfy the Debtor's obligations, obtain refinancing and manage the Property. Pursuant to the Mortgage, the Secured Parties have a contractual right to appoint a

receiver upon a default and/or event of default, as applicable. The Senior Lenders do not oppose the relief sought by the Applicant.

45. Presently, the Project is stalled. The trade contractors have left the site. It is currently unclear to GMIC whether the site is secured generally. GMIC understands while Phase 1 is approximately 80% completed, the roof is currently not watertight, which could lead to significant damage to the Project with winter fast approaching. Further, GMIC understands that although insurance for the Project continues to be in place at this time, amounts owing under the policy have not been paid since February 2023. Accordingly, there is risk of the Real Property being damaged or destroyed, which could materially impair the value of the Security.

46. The Applicant believes that if the Receiver is appointed on the terms of the proposed Receivership Order, the Receivership Proceedings will provide the stability and supervision required to preserve the value of the Project. Moreover, the Applicant believes that these Court-supervised Receivership Proceedings will provide the most effective and appropriate means to secure the Project and effect its sale, with a view to maximizing recoveries for and distributing funds to the Debtor's stakeholders. The Receiver will also have the flexibility to consider options that are currently unavailable to the Debtor that may assist in the sale of the Project, including the disclaimer of some or all of the agreements of purchase and sale for the dwelling units in the Project.

47. In light of all of the foregoing, I believe that the appointment of a receiver and manager over the Property is just and convenient.

48. KSV is prepared to act as the Receiver if so appointed. I am advised by Noah Goldstein of KSV, that KSV is a "licensed trustee" as such term is defined in the BIA and has extensive

experience in Canadian insolvency proceedings, including with respect to real estate developments. A copy of KSV's consent to act as the Receiver is attached hereto as **Exhibit "S"**.

49. I swear this affidavit in support of the Applicant's application to appoint the Receiver over the Property, and for no improper purpose.

SWORN BEFORE ME over)
videoconference on this 2nd day of October,)
2023 in accordance with Ontario *Regulation*)
431/20. The affiant was located in the City of)
Vancouver, in the Province of British)
Columbia and the Commissioner was located)
in the City of Toronto, in the Province of)
Ontario.)



MILAN SINGH-CHEEMA

A Commissioner for Oaths in and for the
Province of Ontario



MICHAEL YEUNG

THIS IS EXHIBIT “**B**” REFERRED TO IN THE
AFFIDAVIT OF
MICHAEL YEUNG
SWORN
THE 16TH DAY OF JANUARY, 2025

A handwritten signature in black ink, appearing to be a stylized 'V' or 'E' with a horizontal line extending to the right, positioned above a horizontal line.

A Commissioner for taking affidavits, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	TUESDAY, THE 12 th
)	
JUSTICE CAVANAGH)	DAY OF DECEMBER, 2023

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED**

**APPROVAL ORDER
(Sale Process)**

THIS MOTION by KSV Restructuring Inc. in its capacity as receiver and manager of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (the “**Receiver**”) for an Order (i) approving of the activities and proposed activities described in the Receiver’s first report dated December 4, 2023 (the “**First Report**”), (ii) approving the proposed marketing and sale process for the property municipally known as 1333 Weber Street East in Kitchener, Ontario (the “**Real**

Property”), as described in the First Report, (iii) amending the appointment order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”) by increasing to \$2,000,000 the amount the Receiver is authorized to borrow, and (iv) sealing the summary of realtor proposals attached as Confidential Appendix “1” to the First Report pending completion of a sale of the Real Property, or until further Order of this Court (whichever is earlier), was heard this day via Zoom videoconference.

ON READING the First Report, and the appendices thereto, and upon hearing submissions of counsel for the Receiver, the Applicant, Computershare Trust Company of Canada, CMLS Financial Ltd., CorFinancial Corp., Westmount Guarantee Services Inc., and the Respondents, no one else appearing, although duly served as set out in the affidavits of service of Chad Kopach sworn December 6, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated December 4, 2023 (the “**NOM**”), and related motion material filed in support of that NOM (the “**Motion Material**”) be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

REPORT APPROVAL

2. **THIS COURT ORDERS** that the First Report, and the actions of the Receiver described therein, be and are hereby approved.

SALE PROCESS APPROVAL

3. **THIS COURT ORDERS** that the marketing and sale process set out in paragraphs 3.2.1 through 3.2.3, inclusive, of the First Report (the “**Sale Process**”) be and is hereby approved. The Receiver is hereby authorized to carry out the Sale Process and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, including authorizing the Receiver to enter into a realtor listing agreement as set out in the First Report, all subject to prior approval of this Court being obtained before completion of any sale transaction under the Sale Process.
4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by this Court in a final order that is not subject to appeal or other review.
5. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions with respect to the Sale Process at any time on at least seven (7) days’ notice to the service list established in this proceeding or such other notice as directed or permitted by the Court.

PIPEDA

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions the Receiver is hereby authorized and permitted to disclose and provide to its agents and any potential purchasers in the Sale Process personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Receiver or, in the alternative, destroy all such information and provide confirmation of its destruction to the Receiver. Any purchaser under a Transaction shall maintain and protect the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Receiver.

BORROWING INCREASE

7. **THIS COURT ORDERS** that paragraph 21 of the Appointment Order be and same is hereby amended to increase the amount the Receiver is authorized to borrow to \$2,000,000.

SEALING ORDER

8. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report, being the Receiver’s summary of proposals received from realtors to list the Real Property for sale (the “**Confidential Appendix**”), shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
 9. **THIS COURT ORDERS** that the Confidential Appendix shall remain under seal and kept confidential until the completion of a sale of the Real Property, or until further Order of the Court.
-

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPROVAL ORDER
(Sale Process)**

BLANEY McMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
ckopach@blaney.com

Lawyers for KSV Restructuring Inc.
in its capacity as Court-appointed Receiver

THIS IS EXHIBIT “C” REFERRED TO IN THE
AFFIDAVIT OF
MICHAEL YEUNG
SWORN
THE 16TH DAY OF JANUARY, 2025



A Commissioner for taking affidavits, etc.



Court File No. CV-23-00706813-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

)

TUESDAY, THE 8th

JUSTICE KIMMEL

)

DAY OF OCTOBER, 2024

)

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents (collectively, the “**Debtors**”), and all proceeds thereof (together with the Real Property, the “**Property**”), for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage

Investment Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation, (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), as assigned to GFD 1333W Limited Partnership on October 7, 2024, and vesting in 1333W Lands Ltd. (the “**Assignee**”) the Respondents' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), (ii) authorizing and directing the Receiver to terminate and disclaim certain of the of the existing agreements of purchase and sale with respect to the purchase of condominium units, (iii) approving a deposit return protocol (the “**Deposit Return Protocol**”) for deposits paid by condominium purchasers who have their existing agreements of purchase and sale with respect to the purchase of condominium units disclaimed or terminated, and (iv) sealing the summary of offers attached as Confidential Appendix ”1” to the Second Report of the Receiver dated September 27, 2024 (the “**Second Report**”), was heard this day by judicial videoconference via Zoom.

ON READING the Second Report of the Receiver, and the appendices thereto, the Supplement to the Second Report of the Receiver dated October 4, 2024 (the “**Supplementary Second Report**”), and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicant, Westmount Guarantee Services Inc., CMLS Financial Ltd., and such other parties that appear on the counsel slip, no one appearing for any other person, although properly served as appears from the affidavit of Chad Kopach sworn September 30, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated September 27, 2024 (the “**NOM**”), the related motion material filed in support of that NOM, including the Receiver’s Motion Record, Volume 1 dated September 27, 2024, and the Receiver’s

Motion Record, Volume 2 (Confidential Appendix) dated September 27, 2024 (collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and the Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Assignee.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Assignee substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor’s right, title and interest in and to Purchased Assets described in the Sale Agreement, including, without limitation, the Real Property listed on **Schedule “B”** hereto, shall vest absolutely in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, constructive, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Cavanagh made on October 12, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property*

Security Act (Ontario) or any other personal property registry system; (iii) all mortgages, pledges, charges, liens, debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreements, leases, options, easements, rights of way, restrictions, executions, or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting legal or beneficial title to the Purchased Assets or any part thereof or interest therein, including but not limited to any of the foregoing which are registered on title to the Purchased Assets following the date hereof but prior to the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order to which this Order is attached; (iv) all rights and claims of any condominium purchasers pursuant to any existing agreements of purchase and sale with respect to the purchase of condominium units which are terminated or disclaimed; and (v) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Assignee as the owner of the subject Real Property identified in

Schedule “B” hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Respondents,

the vesting of the Purchased Assets in the Assignee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other

reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TERMINATION AND DISCLAIMER OF AGREEMENTS OF PURCHASE AND SALE

7. **THIS COURT ORDERS** that the Receiver is hereby authorized, on or following closing of the Transaction, to terminate and disclaim all of the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B in the Project (as each term is defined in the Second Report) and, upon the delivery of the Receiver's Certificate in accordance with this Order, any rights or claims thereunder or relating thereto are not continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized, following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction, to terminate and disclaim the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower A (as defined in the Second Report) in the Project that are not being assumed by the Assignee, and upon the Receiver terminating and disclaiming such agreements of purchase and sale, any rights or claims thereunder or relating thereto shall not be continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

DEPOSIT RETURN PROTOCOL

9. **THIS COURT ORDERS** that the Deposit Return Protocol attached as Appendix "A" to Supplementary Second Report dated October 4, 2024, be and same is hereby approved.

SEALING AND GENERAL

10. **THIS COURT ORDERS** that the summary of offers received in the Sale Process and attached as Confidential Appendix “1” to the Second Report, shall be and are hereby sealed, kept confidential and shall not form part of the public record until the earlier of (a) 30 days following the closing of the Transaction, or (b) further Order of this Court.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order is effective from today’s date and is enforceable without the need for entry and filing.



Digitally signed by
Jessica Kimmel
Date: 2024.10.09
15:14:48 -04'00'

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-23-00706813-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

RECEIVER’S CERTIFICATE

RECITALS

I. Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 12, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents, and all proceeds thereof (together with the Real Property, the “**Property**”).

II. Pursuant to an Order of the Court dated October 8, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage Investment

Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), and provided for the vesting in 1333W Lands Ltd. (the “**Assignee**”) of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Assignee has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager, and not in its personal capacity or in any other capacity

Per: _____
Name:
Title:

Schedule “B” – Legal Description of the Property

PIN 22590-0550 (LT) in LRO No. 58

LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 90 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BYLAW AS IN 270276), ALL BEING PARTS 1, 2 AND 3, PLAN 58R-21405, SUBJECT TO AN EASEMENT AS IN 687124, SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 58R-21405 AS IN WR1306081, SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, PLAN 58R-21405 AS IN WR1324371, SUBJECT TO AN EASEMENT AS IN WR1326075, CITY OF KITCHENER

Schedule “C”- List of Encumbrances to be expunged and discharged

- 1) Instrument No. WR508428 registered December 7, 2009 being a Notice Of Change Of Address For Service—Instrument.
- 2) Instrument No. WR1299640 registered November 24, 2020 being a Charge to and in favour of WESTMOUNT GUARANTEE SERVICES INC., in the original principal amount of \$20,000,000;
- 3) Instrument No. WR1306083 registered Dec. 17, 2020 being a Postponement in favour of The Corporation of the City of Kitchener;
- 4) Instrument No. WR1324372 registered March 12, 2021 being a Postponement in favour of The Regional Municipality of Waterloo;
- 5) Instrument No. WR1367209 registered August 17, 2021 being a Charge to and in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp., in the original principal amount of \$82,000,000;
- 6) Instrument No. WR1367210 registered August 17, 2021, being a Notice of Assignment of Rents General in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 7) Instrument No. WR1367215 registered August 17, 2021 being a Postponement in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 8) Instrument No. WR1507433 being a Notice registered May 8, 2023 amending WR1299640;
- 9) Instrument No. WR1507448 registered May 8, 2023 being a Charge to and in favour of Corfinancial Corp. in the original principal amount of \$3,500,000;
- 10) Instrument No. WR1518428 registered July 6, 2023 is a Construction Lien from Gold Star Drywall Services Inc. in the claimed amount of \$787,259.65.
- 11) Instrument No. WR1518912 registered July 7, 2023 is a Construction Lien from Dean-Lane Contractors Inc. in the claimed amount of \$2,157,415.
- 12) Instrument No. WR1519072 registered July 10, 2023 is a Construction Lien from Conestoga Roofing & Sheet Metal Ltd. in the claimed amount of \$311,562.
- 13) Instrument No. WR1521083 registered July 19, 2023 is a Construction Lien from Aluminum Window Designs Ltd. in the claimed amount of \$1,662,600.

- 14) Instrument No. WR1521506 registered July 20, 2023 is a Construction Lien from Greentech Sealants Inc. in the claimed amount of \$220,190.
- 15) Instrument No. WR1521825 registered July 21, 2023 is a Construction Lien from Classic Tile Contractors Limited in the claimed amount of \$591,923.
- 16) Instrument No. WR1522293 registered July 25, 2023 is a Construction Lien from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. in the claimed amount of \$1,374,127.
- 17) Instrument No. WR1522297 registered July 25, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$344,955.
- 18) Instrument No. WR1525011 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$135,600.
- 19) Instrument No. WR1525014 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$66,912.
- 20) Instrument No. WR1525022 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$364,425.
- 21) Instrument No. WR1525872 registered August 9, 2023 is a Construction Lien from Pearson Metal Inc. in the claimed amount of \$647,217.
- 22) Instrument No. WR1525921 registered August 9, 2023 is a Construction Lien from HGL Electrical in the claimed amount of \$3,123,088.
- 23) Instrument No. WR1527801 registered August 17, 2023 is a Construction Lien from Matthews Equipment Limited in the claimed amount of \$85,018.
- 24) Instrument No. WR1530052 registered August 29, 2023 is a Construction Lien from ABA Architects Inc. in the claimed amount of \$432,315.
- 25) Instrument No. WR1530175 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$45,878.
- 26) Instrument No. WR1530179 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$143,133.
- 27) Instrument No. WR1532157 registered September 6, 2023 is a Construction Lien from Gillam Urban Constructors Inc. in the claimed amount of \$1,748,531.
- 28) Instrument No. WR1532406 registered September 7, 2023 is a Certificate of Action from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. re Instrument No. WR1522293.

- 29) Instrument No. WR1533262 registered September 12, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$12,555.
- 30) Instrument No. WR1534716 registered September 20, 2023 is a Certificate of Action from Pearson Metal Inc. re Instrument No. WR1525872.
- 31) Instrument No. WR1535931 registered September 27, 2023 is a Certificate of Action from Dean-Lane Contractors Inc. re Instrument No. WR1518912.
- 32) Instrument No. WR1536124 registered September 27, 2023 is a Certificate of Action from O'connor Electric Ltd. re Instrument No. WR1522297 and WR1533262.
- 33) Instrument No. WR1536918 registered September 29, 2023 is a Certificate of Action from Classic Tile Contractors Limited re Instrument No. WR1521825.
- 34) Instrument No. WR1537429 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$2,467,563.
- 35) Instrument No. WR1537430 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$873,036
- 36) Instrument No. WR1537590 registered October 4, 2023 is a Certificate of Action from Oxford Builders Builders Supplies Inc. re Instrument No. WR1525011, WR1525014, WR1525022, WR1530179, WR1530175.
- 37) Instrument No. WR1537739 registered October 5, 2023 is a Certificate of Action from Conestoga Roofing & Sheet Metal Ltd. re Instrument No. WR1519072.
- 38) Instrument No. WR1537806 registered October 5, 2023 is a Certificate of Action from Aluminum Window Design Installations Inc. re Instrument No. WR1521083.
- 39) Instrument No. WR1538280 registered October 10, 2023 is a Certificate of Action from ABA ARCHITECTS INC.re Instrument No. WR1530052.
- 40) Instrument No. WR1538717 registered October 11, 2023 is a Notice of an Exclusive Listing Agreement made as of March 22, 2019 between 1776411 Ontario Ltd. and Rego Realty Inc.
- 41) Instrument No. WR1538754 registered October 12, 2023 is a Certificate of Action from Gold Star Drywall Services Inc. re Instrument No. WR1518428.
- 42) Instrument No. WR1538821 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. re Instrument No. WR1532157.

- 43) Instrument No. WR1538822 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537429.
- 44) Instrument No. WR1538823 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537430.
- 45) Instrument No. WR1543864 registered November 7, 2023 is an Application to Register Court Order from Ontario Superior Court Of Justice - Commercial List re appointing receiver KSV.
- 46) Instrument No. WR1549167 registered December 5, 2023 is a Notice of Security Interest from Enercare Home and Commercial Services Limited Partnership, and Enercare Home and Commercial Services Inc. in the consideration of \$1,225,341.72.
- 47) Instrument No. WR1551094 registered December 15, 2023 is a Construction Lien from Troy Life & Fire Safety Ltd. in the claimed amount of \$184,715.
- 48) Instrument No. WR1551772 registered December 20, 2023 is a Notice of Security Interest from Metergy Solutions Inc. in the consideration of \$3,621,837.
- 49) Instrument No. WR1562497 registered March 13, 2024 is a Certificate of Action from Troy Life & Fire Safety Ltd. re Instrument No. WR1551094.

Schedule “D” - Permitted Encumbrances

General

1. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein.
2. All Applicable Laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances.
3. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or a Province of Canada.
4. Any encumbrances filed by or at the request of the Purchaser or which are otherwise expressly approved by the Purchaser in writing.

Specific

5. Transfer Easement registered on August 20, 1980 in favour of the Hydro-Electric Commission of Kitchener-Wilmont as Instrument No. 687124.
6. Notice (airport zoning regulations) registered on May 4, 2009 in favour of His Majesty the King in Right of Canada as Instrument No. WR459096.
7. Transfer Easement registered on December 17, 2020 in favour of The Corporation of the City of Kitchener as Instrument No. WR1306081.
8. Notice (encroachment agreement) registered on February 17, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1318720.
9. Transfer Easement registered on March 12, 2021 in favour of The Regional Municipality of Waterloo as Instrument No. WR1324371.
10. Transfer Easement registered on March 19, 2021 in favour of Rogers Communications Inc. as Instrument No. WR1326075.
11. Notice (development agreement) registered on August 20, 2021 in favour of The Corporation of the City of Kitchener as Instrument No. WR1368206.
12. Notice registered on August 20, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1368207.
13. Application for Absolute Title registered on April 21, 2022 as Instrument No. WR1429995.
14. Notice (encroachment agreement) registered on May 5, 2022 in favour of The Corporation of the city of Kitchener as Instrument No. WR1434025.
15. Notice registered on September 20, 2022 in favour of The Corporation of the City of Kitchener as Instrument No. WR1467608.

Court File No. CV-23-00706813-00CL
1776411 ONTARIO LTD. et al.
Respondents

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto	
APPROVAL AND VESTING ORDER	
BLANEY McMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto ON M5C 3G5 Eric Golden (LSO #38239M) (416) 593-3927 (Tel) egolden@blaney.com Chad Kopach (LSO #48084G) (416) 593-2985 (Tel) ckopach@blaney.com Lawyers for KSV Restructuring Inc. in its capacity as Court-appointed Receiver	

THIS IS EXHIBIT “**D**” REFERRED TO IN THE
AFFIDAVIT OF
MICHAEL YEUNG
SWORN
THE 16TH DAY OF JANUARY, 2025

A handwritten signature in black ink, appearing to be a stylized 'J' or 'K' with a horizontal line extending to the right, positioned above a horizontal line.

A Commissioner for taking affidavits, etc.

Court File No. CV-23-00706813-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED**

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 12, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Property**”) and all the other assets, undertakings and properties of each of the Respondents, including all the assets held in trust or required to be held in trust by or for any of the Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Property, the “**Specified Property**”).

II. Pursuant to an Order of the Court dated October 8, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr Capital Corporation, as the original purchaser, dated March 4, 2024, as amended and as assigned to GFD 1333W Limited Partnership (the “**Purchaser**”), as purchaser (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at 4:40 p.m on October 29, 2024.

✓

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Specified Property, and not in its personal capacity or in any other capacity

Per:



Name: Mitch Vininsky

Title: Managing Director

Court File No. CV-23-00706813-00CL

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceeding commenced at Toronto</p>
	<p>RECEIVER'S CERTIFICATE</p>
	<p>BLANEY McMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto ON M5C 3G5</p> <p>Eric Golden (LSO #38239M) (416) 593-3927 (Tel) egolden@blaney.com</p> <p>Chad Kopach (LSO #48084G) (416) 593-2985 (Tel) ckopach@blaney.com</p> <p>Lawyers for KSV Restructuring Inc. in its capacity as Court-appointed Receiver</p>

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**GENESIS MORTGAGE INVESTMENT and 1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
CORP.**

Applicant

Respondents

Court File No.: CV-23-00706813-00CL

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn January 16, 2025)**

BENNETT JONES LLP

One First Canadian Place, Suite 3400
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Lawyers for GFD 1333W Limited Partnership

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 23 rd
)	
JUSTICE STEELE)	DAY OF JANUARY, 2025

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(AVO Amendment Order)**

THIS MOTION made by GFD 1333W Limited Partnership (“**GFD LP**”) for an Order, among other things, amending paragraph 8 of the Approval and Vesting Order granted by this Court in these proceedings on October 8, 2024 (the “**AVO**”) was heard this day via Zoom videoconference.

ON READING the affidavit of Michael Yeung sworn January 16, 2025 and the Exhibits thereto, and on hearing the submissions of counsel for GFD LP and such other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated and this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used but not otherwise defined herein have the meanings ascribed in the AVO.

AMENDMENT OF AVO

3. **THIS COURT ORDERS** that paragraph 8 of the AVO is hereby amended to delete the words “within 120 days of the closing of the Transaction” and to insert in their place “by no later than August 31, 2025”, such that the Assignee shall be required to provide the contemplated notice to the Receiver by no later than August 31, 2025.

MISCELLANEOUS

4. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. as of the date that it is made and is enforceable without the need for entry and filing.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**GENESIS MORTGAGE INVESTMENT and 1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
CORP.**

Applicant

Respondents

Court File No.: CV-23-00706813-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER
(AVO Amendment Order)

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**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**GENESIS MORTGAGE INVESTMENT and 1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
CORP.**

Applicant

Respondents

Court File No.: CV-23-00706813-00CL

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**MOTION RECORD
(Returnable January 23, 2025)**

BENNETT JONES LLP

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